

### **REMARKS**

I. Beginning at the bottom of page 2 of the Office Action, claims 25-34 were rejected under judicially-created doctrine of obviousness-type double patenting (OTDP) over claims 1 and 2 of U.S. Pat. No. 5,679,567; claims 1-3 of U.S. Pat. No. 5,599,711; or claim 1 of U.S. Pat. No. 5,356,810.

The rejection is traversed for the following reasons.

In the Office Action mailed 23 September 1999, one of the rejections maintained against claims 25-34 was that of OTDP over claims of the '810 patent.

An Appeal to the Court of Appeals for the Federal Circuit was filed and the OTDP rejection was briefed by applicants as improper.

The Patent Office agreed, the Solicitor Mr. John Whelan communicating to the undersigned prior to the Joint Motion for Remand filed 24 September 2004 that as the claims could not have been combined in a single application because of the lack of common ownership, the rejection is improper, citing *In re Schneller*, 397 F.2d 350, 159 U.S.P.Q. 210, C.C.P.A. 1968.

In view thereof, in a decision mailed 28 February 2005, the Board of Patent Appeals and Interferences vacated the OTDP rejection over the '810 patent.

The Examiner is invited to contact Ms. Janet Gongola of the Solicitor's Office to discuss the above, which is in the record. The original attorneys who handled the appeal for the U.S. Patent Office, Mr. John Whelan and Ms. Heather Auyang, are no longer employees of the Patent Office. Ms. Gongola can be reached at 571.272.8734.

Hence, the rejection over the '810 patent is improper and must be removed.

The three cited patents are owned by Gist-Brocades and DSM N.V., see the attached copies of the Assignment Abstract of Title for the three patents.

The instant application has never been owned by any of the entities noted on those three Abstracts of Title.

Hence, there never was common ownership of the three cited patents and of the instant application. Accordingly, based on the logic which led to the reversal of the rejection over the '810 patent discussed above, namely, that the claims could not have been joined in a single application because common ownership was lacking, the rejection over all three patents must be removed.

Moreover, the rejection is grounded on either of the three cited patents. All three of the patents have the same inventive entity. The three patents are associated in the rejection by the disjunctive conjunction, "or." That means the cited patents are deemed equivalent. Hence, if the rejection over the '810 patent is improper, so would be the rejection over equivalent patents, the '567 patent and the '711 patent.

Finally, the '567 patent is a division of the '810 patent and the '711 patent is a continuation of the '810 patent, further supporting the identity of the three patents. Because the rejection over the '810 patent is improper, so too is the rejection over the '567 patent and over the '711 patent.

Accordingly, for all of the reasons explained herein and in the record, the rejection is improper and must be removed.

**CONCLUSION**

Reexamination, reconsideration, withdrawal of the rejection and early notification of allowance are requested respectfully. If any questions remain, the Examiner is requested respectfully to contact the undersigned at the local exchange noted hereinbelow.

Respectfully submitted,

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